

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DERAY SMITH,

Petitioner,

vs.

KENNETH MCKEE

Respondent.

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Civil Action No. 09-CV-14876

HON. BERNARD A. FRIEDMAN

**ORDER TRANSFERRING PETITIONER'S RULE 60(b)(2) MOTION  
TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

This matter is presently before the Court on petitioner's "motion for relief from judgment pursuant to Rule 60(B)(2) newly discovered evidence . . ." [docket entry 58]. The Court dismissed petitioner's application for the writ in an opinion and order dated May 11, 2012 [docket entry 35] because the application was untimely. Petitioner appealed, but the court of appeals denied his application for a certificate of appealability and his motion to proceed on appeal in forma pauperis. In the interim petitioner had filed a motion for relief from judgment [docket entry 39], as well as various other motions, which the Court recently denied [docket entry 55]. Petitioner has appealed from that order [docket entry 56], and he now has filed the instant motion for relief from judgment [docket entry 58]. The instant motion, in which petitioner again challenges his state conviction and seeks release from prison, appears to be a second or successive habeas petition, and it may not proceed without authorization from the court of appeals. *See* 28 U.S.C. § 2244(b)(3)(A). Accordingly,

IT IS ORDERED that petitioner's motion for relief from judgment [docket entry 58] is hereby transferred to the United States Court of Appeals for the Sixth Circuit pursuant to *In re Sims*, 111 F.3d 45, 47 (6th Cir.1997).

Dated: May 24, 2013  
Detroit, Michigan

\_\_\_\_\_/s/ Bernard A. Friedman\_\_\_\_\_  
BERNARD A. FRIEDMAN  
SENIOR UNITED STATES DISTRICT JUDGE